IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 777 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD

Versus

HEIRS OF DECD.JESABHAI DHANABHAI

Appearance:

MR PV NANAVATI for Appellant

NOTICE SERVED for Respondents No. 1 to 5

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 09/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the appellant. Respondents-original claimants are absent though served.

2. This is an appeal under section 173 of the Motor Vehicles Act, 1988, at the instance of the insurer of the vehicle which is allegedly involved in the accident in question.

2. The appellant challenges herein the order passed by the Tribunal under section 140 of the said Act. Obviously, this award is in the nature of an interim award which is subject to adjustment against the final award which may be passed in the main claim petition pending before the Motor Accident Claims Tribunal. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala, reported at 2001(4) JT 477.

3. In the premises aforesaid, we see no useful purpose being served by keeping the present appeal pending, and in our opinion, the directions issued in the present appeal would meet the ends of justice.

4. The original claimants shall, file an undertaking before the Tribunal within four weeks of the service of this order on the claimants to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause, and that the claimants shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

5. On the said undertaking being filed, the amount of the impugned award may be withdrawn by the original claimants on furnishing security to the satisfaction of the Tribunal.

6. Subject to the observations and directions hereinabove, the present appeal is dismissed with no order as to costs.

7. The amount deposited in the appeal, if any, with the Registry is directed to be transmitted to the Tribunal forthwith i.e. not later than 20th October 2001.

8. The R & P to be re-transmitted to the Tribunal forthwith i.e. latest by 20th October 2001.

9. Direct service is permitted.

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